

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Plaintiff submitted an *in forma pauperis* application and a civil complaint under the Federal Tort Claims Act (“FTCA”). Dkt. 1 at 1. She alleges the Federal Bureau of Investigations (“FBI”) has violated her rights by charging her with phone harassment between 2001 and 2006. *Id.* at 14. For the following reasons, the Court recommends the application to proceed *in forma pauperis* be denied and that the complaint be dismissed without prejudice.

First, plaintiff has not named a proper party. Under the FTCA, the United States is the only proper party defendant. *See 28 U.S.C. § 2679(a) (1998).* Plaintiff's claim against the FBI is not a claim against the United States. *See Kennedy v. United States Postal Service*, 145 F.3d 1077, (9th Cir. 1998).

Second, plaintiff is time barred from pursuing two of the three phone harassment allegations contained in the complaint. Under the FTCA a tort claim “shall be forever barred” unless it is presented “within two years after such claim accrues.” 28 U.S.C. § 2401(b). Plaintiff

1 alleges the FBI has violated her rights regarding phone harassment occurring on December 4,  
2 2001, December 15, 2002, and December 29, 2006. Dkt. 1 at 14. The 2001 and 2002 harassments  
3 are time barred and must be dismissed on that basis.

4 The 2006 harassment allegation is not time barred but should be dismissed because  
5 plaintiff has not alleged sufficient facts to demonstrate a justiciable claim. *See* Fed. R. Civ. P.  
6 12(b)(6). Plaintiff's 25 page complaint makes extensive references to plaintiff's terrorism and  
7 national security research but skips over the factual basis for her claim that the FBI violated her  
8 rights regarding phone harassment.

9 Based on the deficiencies in plaintiff's complaint, her *in forma pauperis* application should  
10 be denied and this action should be dismissed without prejudice. If plaintiff believes that the  
11 deficiencies outlined herein can be cured by amendment to her complaint, she should lodge an  
12 amended complaint as part of her objections, if any, to this Report and Recommendation. A  
13 proposed Order of Dismissal accompanies this Report and Recommendation.

14 DATED this 28<sup>th</sup> day of October, 2008.

15  
16   
17 BRIAN A. TSUCHIDA  
18 United States Magistrate Judge  
19  
20  
21  
22  
23